

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DIMITRI VALERYEVICH
TATARINOV,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SAN
DIEGO; OFFICE OF THE CHIEF
COUNSEL, DEPT. OF HOMELAND
SECURITY; U.S. ATTORNEY,
SOUTHERN DISTRICT; ICE
DETENTION & REMOVAL UNIT,

Respondents.

Civil No. 07cv2033-L(NLS)

**ORDER DENYING WITHOUT
PREJUDICE RESPONDENT
SUPERIOR COURT OF THE STATE
OF CALIFORNIA, COUNTY OF
SAN DIEGO'S MOTION TO
DISMISS**

On December 7, 2007, Respondent Superior Court of the State of California, County of San Diego ("State") filed a Motion to Dismiss Consolidated Petition for Writ of Habeas Corpus. For the reasons which follow, the motion is **DENIED WITHOUT PREJUDICE**.

This is the State's renewed motion to dismiss. The State's initial motion to dismiss was denied as moot on December 4, 2007 because a new petition had been filed. In the December 4 order the court also admonished the State that any future motions must comply with all applicable Local Rules or Electronic Case Filing Administrative Policies and Procedures. As before, the State's renewed motion fails to comply with the requirements of Civil Local Rule 7.1

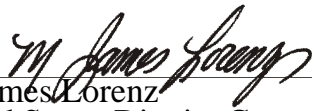
1 and with the court's directions pertaining to the lodged exhibits. Counsel is again advised that
2 any further failure to comply may lead to penalties pursuant to Civil Local Rule 83.1.

3 The court also notes that the State labors under the assumption that the petition was filed
4 pursuant to 28 U.S.C. § 2254. This assumption is incorrect, as the petition, since the inception
5 of the case, has clearly been captioned as a petition brought under 28 U.S.C. § 2241.
6 Accordingly, in any future filings, including its response to the petition, the State is instructed to
7 direct its arguments toward the issue whether the petition meets the requirements for relief
8 pursuant to section 2241.

9 For the foregoing reasons, the State's Motion to Dismiss Consolidated Petition for Writ of
10 Habeas Corpus is **DENIED WITHOUT PREJUDICE.**

11 **IT IS SO ORDERED.**

12
13 DATED: December 10, 2007

14 
15 M. James Lorenz
United States District Court Judge

16 COPY TO:

17 HON. NITA L. STORMES
UNITED STATES MAGISTRATE JUDGE

18 ALL PARTIES/COUNSEL
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